

Application No. 10/734,428

REMARKS

In an Office Action dated September 8, 2005, claims 1-3, 5-6 and 8-13 were rejected under 35 U.S.C. 102(e) as being anticipated by Nagda et al (U.S. Patent 6,862,524). Claims 16 and 18-20 were rejected under 35 U.S.C. 102(e) as anticipated by Ask et al (U.S. patent 6,754,580). Claims 4, 14, 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nagda and alleged common knowledge. Claim 7 was rejected under 35 U.S.C 103(a) as unpatentable over Nagda in view of Robinson et al. (U.S. patent 6,577,949). The remaining claims 17 and 21-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over ask in view of Nagda.

In response, Applicant has amended independent claim 1 to incorporate the limitation of claim 4 wherein the speed of the vehicle is transmitted from speed sensing electronics coupled to the navigation system. Claim 14 claiming using the fastest moving vehicle as the route speed has also been rewritten in independent form. Claim 15 is related to claim 14 in that the fastest moving vehicle is determined to be in a carpool lane and is also believed to be patentable. Independent claim 16 has been rewritten to include the limitation of claim 22 wherein the receiving, transmitting and processing units are in a vehicle avoiding the need for a central network. Independent claim 23 has been rewritten to also include the limitation of claim 14 which claims computing the route speed based on the fastest moving vehicle near the point. Applicant respectfully submits that a prima facie case of obviousness has not been made with respect to the described limitations.

In order for an obviousness rejection under 35 U.S.C. 103(a) to be sustained, the Examiner has the burden of making a prima facie case of obviousness by the presentation of adequate evidence (e.g., see *In re Thrift*, 63 USPQ 2d 2002 (CAFC 9/9/2002)). As is also well recognized, where a combination of prior art references are combined, the prior art must provide a suggestion or motivation for making such combination (e.g., see *Crown Operations Int'l v. Solutia*, 62 USPQ 2d 1917 (CAFC 5/13/2002)). With regard to the evidence required to provide a prima facie showing of obviousness, the Court of Appeals of the Federal Circuit has held that an obviousness determination may not substitute the common knowledge of one skilled in the art for the

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required specific evidentiary support required for a 35 U.S.C. 103 rejection (see In re Lee, 61 USPQ 2d 1430 (CAFC 1/18/2002)).

Applicant respectfully submits that no reference has been provided that describes the limitation of claim 4 wherein a speedometer is used to transmit the speed data. Nagda describes the data transmitted as GPS data and computes the speed from the GPS data. However, using continuously changing GPS data to compute speed results in a need to constantly track the car thereby using valuable wireless bandwidth. This factor is particularly important in areas with limited bandwidth or in the embodiment of the invention where cars communicate with each other avoiding a central network. Applicant respectfully submits that no motivation for using speedometer data rather than GPS data is provided in the Nagda reference.

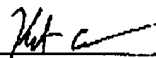
Applicant also respectfully submits that no reference has been provided that describes the limitation of claim 14. Nagda is focused on the average moving speed of vehicles and/or the speed of a vehicle with relation to the speed limit to help assure that hazardous material is not being transported at too high a speed. Applicant is focused on the fastest moving vehicle near a point and the lane of the fastest moving vehicle specified in claim 15. Applicant is interested in enabling vehicles to adjust to and utilize the fastest lanes including the carpool lanes, regardless of the speed limit (although Applicant is not suggesting that one should necessarily exceed the speed limit, the invention is not focused on keeping one within the speed limit). Applicant respectfully submits that nothing in Nagda suggests or renders obvious claim 14 and 15.

The above described limitations become particularly useful in the newly amended claim 16 incorporating some of the limitations of the former dependent claim 21 wherein the receiving, processing and transmitting units are in a single vehicle. In regions without direct communications with towers, it is useful to have the vehicles directly communicate with each other. Applicant also notes that in such implementations, it is particularly useful to have the transmission of the type claimed in the former claim 4 (now claim 1) that avoids having to have vehicles continuously track each other, but receives compact data simply as a speed from a speedometer and a position from a GPS signal.

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In view of the preceding amendments and remarks, Applicant respectfully submits that the claims as amended are allowable over the cited prior art reference, and allowance is hereby respectfully requested. In the event that the Examiner believes a teleconference would facilitate prosecution, Applicant respectfully requests that Examiner contact the undersigned.

Respectfully submitted,



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